

REMARKS

Claims 1-3, 5, and 26-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Zemon (U.S. Patent Number 5,603,389). Claims 26-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ziaylek et al. (U.S. Patent Number 6,220,557) in view of Keppens (U.S. Patent Number 1,680,050).

Claims 23-25 and 29-37 were allowed. Claims 4 and 6-14 were objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejections under 35 U.S.C. § 102(b):

Claims 1-3, 5, and 26-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Zemon. For a claim to be anticipated, each and every element as set forth in the claim must be found in a single prior art reference. See M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

Claim 1 requires "a truss for fixed connection to a vertical surface, the truss including a top frame defining a first aperture for receiving a construction mast; a bottom frame defining a second aperture for receiving the construction mast; vertical members connecting the top frame and the bottom frame." With this Amendment, claim 1 is amended to also require "lacing members extending between the vertical members." (See Appl. at p. 3, lines 14-18, and FIGS. 1 and 2.)

The Examiner asserts that Zemon discloses a truss including a top frame (20) defining a first aperture, a bottom frame (22) defining a second aperture, and vertical members (14 and 16) connecting the top and bottom frame. However, Zemon discloses a pole top safety device, and "[t]he device 10 generally includes a housing which is positioned on the top of pole 100." (Column 3, lines 39-41) In reference to element 20, Zemon states "[a] top cap 20 may be provided to enclose the housing at a top portion thereof, substantially preventing the ingress of rain or other precipitation." (Column 3, lines 51-53) Since top cap 20 in Zemon functions to enclose pole 100, element 20 in Zemon is not a top frame defining a first aperture.

Amended claim 1 further requires that the truss include "lacing members extending between the vertical members." In reference to elements 14 and 16, Zemon states that [t]he housing is formed of an outer sleeve 14 and an inner sleeve 16." (Column 3, lines 44-45) Zemon does not disclose lacing members extending between outer and inner sleeves 14 and 16. As shown in FIG. 3 of Zemon, there is nothing extending between sleeves 14 and 16. Because Zemon does not disclose a truss with lacing members extending between the vertical members, as required by claim 1, claim 1 is not anticipated by Zemon.

Claims 2, 3 and 5 are dependent on claim 1 and are allowable therewith.

Similar to claim 1, claim 26 requires "a truss for fixed connection to a vertical surface, the truss including a top frame portion defining a top opening; a bottom frame portion defining a bottom opening." With this Amendment, claim 26 is amended to further require "vertical members connecting the top frame portion and the bottom frame portion; and lacing members extending between the vertical members." (See Appl. at p. 3, lines 14-18, and FIGS. 1 and 2.)

As discussed above for claim 1, Zemon does not disclose a top frame portion defining a top opening. Rather, Zemon discloses "a top cap 20...to enclose the housing at a top portion thereof." (Column 3, lines 51-52) Moreover, as stated above, Zemon does not disclose lacing members extending between the vertical members. Because Zemon does not disclose these elements required in claim 26, claim 26 is not anticipated by Zemon.

Claims 27 and 28 are dependent on claim 26 and are allowable therewith.

Rejections under 35 U.S.C. § 103(a):

Claims 26-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ziaylek et al. in view of Keppens.

Claim 26 has been amended to require that the truss include "vertical members connecting the top frame portion and the bottom frame portion; and lacing members extending between the vertical members."

Neither Ziaylek nor Keppens discloses or suggests a truss including vertical members connecting a top frame portion and a bottom frame portion, and lacing members extending between the vertical members. In Ziaylek, even if backing plate member 16 were construed as a vertical member connecting a top frame portion and a bottom frame portion, Ziaylek does not teach or suggest lacing members extending between the vertical members. In Ziaylek, there is only a single backing plate member 16. If a second backing plate member were added to the mounting bracket 10 on an opposing side, mounting bracket 10 would not be functional since an object to be supported by mounting bracket 10 is inserted through an opening between first clamp arm 24 and second clamp arm 26 of clamping member 18. Thus, because Ziaylek only discloses one backing plate member 16, it is not possible in Ziaylek for lacing members to extend between vertical (backing plate) members, as required by claim 26.

Keppens does not teach or suggest vertical members connecting a top frame portion and a bottom frame portion. Keppens discloses upper collar 11 and lower collar 2; however, Keppens does not disclose a structural element connecting upper collar 11 and lower collar 2. Instead, Keppens teaches that upper collar 11 is connected to bars 5, and lower collar 2 is connected to bars 6 (see FIG. 2). In addition, Keppens does not teach or suggest lacing members extending between the vertical members, as also required by claim 26. Keppens discloses a folding tree holder, and an objective disclosed in Keppens is a device "which will fold into a convenient size and shape when not in use." (Column 1, lines 10-11) If Keppens were modified to include vertical members connecting the upper collar 11 and lower collar 2, as well as lacing members extending between the vertical members, the tree holder could not be folded into the compact shape shown in FIG. 3.

The combination of Ziaylek and Keppens does not teach or suggest all the claim limitations of claim 26. Specifically, Ziaylek in combination with Keppens does not teach or suggest a truss including vertical members connecting a top frame portion and a bottom frame portion, and lacing members extending between the vertical members. As such, claim 26 is patentable over the combination of Ziaylek and Keppens.

Again, claims 27 and 28 depend from independent claim 26 and are allowable therewith.

Allowable claims:

Claims 4 and 6-14 were objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims. Since claim 1, as amended, is in condition for allowance, claims 4 and 6-14 are allowable as dependent claims of claim 1.


CONCLUSION

Because the prior art of record does not teach, show or suggest all the limitations in claims 1-3, 5, and 26-28, claims 1-14 and 26-28 are now in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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